of so large a state as Russia could hardly be justified; certainly not without some explanation making the reason for it clear. It would be ungrateful, however, to complain that everything has not been done, when the Association has done so much.

By this publication a great service has been rendered to legal thought in this country. The time is rapidly approaching when our existing American criminal law must inevitably undergo an extensive revision, not only to meet the social changes which have taken place since it acquired its original form, but also to meet the changed theories of the relation of the law and state to the criminal population. In such a revision a knowledge of what has been thought and done in countries other than our own, yet with civilizations and problems not unlike our own, cannot wisely be disregarded. This volume opens to future legislators and jurists the door of a vast treasure house of experience and theory.

Its arrangement is clear, the indexing good, and the translation, so far as can be judged without a careful comparison with the original writers, an excellent piece of work. ARTHUR D. HILL.

A TREATISE ON THE RESCISSION OF CONTRACTS AND CANCELLATION OF WRITTEN INSTRUMENTS. By Henry Campbell Black. Two volumes. Kansas City: Vernon Law Book Co. 1916.

If law is a science, law books ought to be written like treatises in other sciences — economics, politics, education — and not like the *magnum opus* of the clergymen in "The Way of All Flesh": "After breakfast he retires to his study; he cuts little bits out of the Bible and gums them with exquisite neatness by the side of other little bits." We have a similar atomic theory of law books, except that the atom instead of being a Scriptural verse is the headnote. Headnotes arranged vertically make a digest. Headnotes arranged horizontally make a textbook. Textbooks arranged alphabetically make an encyclopedia. Every few years some investigator has to disintegrate one of these works into its constituent atoms, add some more headnotes from recent decisions, stir well, and give us the latest book on the subject. And so law libraries grow.

But the law does not thus grow. Or, at least, it grows only by the accretion of new decisions which increase the existing confusion. While a collection of holdings from one jurisdiction does at least serve to indicate the law of that jurisdiction, a mass of authorities from fifty states establishes *per se* no law whatever. The only value of such cases, outside of their own state, is to furnish reasons for the doctrine held by them, and if the reasons are left out of the textbook, we have only a list of citations to serve as a starting point for true investigation by somebody else.

What we need to promote true growth in the law is a textbook which will discuss and endeavor to solve the problems in human life and social adjustment presented by a particular branch of law. What we get is too often a tremendous conglomeration of sets of facts, more or less well arranged under headings, with a moderate amount of comment by way of introduction. Undoubtedly decided cases are a very valuable aid in the solution of legal problems, but they are only a means to that end; and there are other means, which are usually ignored.

In the scientific legal treatise for which we hope, the indispensable task of gathering decisions seems only a first step. The second step would be a classification of the reasons for and against proposed methods of handling a given situation,[1] and the text-writer would draw these reasons, not only from judicial

[1] For an illustration of this method as applied to a political problem, see the discussion of the referendum in W. B. MUNRO, GOVERNMENT OF AMERICAN CITIES, p. 334.

opinions and other legal writings, including the Civil Law, but from any lay thinkers who had considered the problem now before him,[2] and from any facts, however ascertained, which have a bearing. He would regard precedents as only a part, though a very important part of his data. His third step would be to weigh and balance these reasons pro and con, in order to obtain a proper rule, that is, a solution for his problem. In many cases he would get help from seeing how similar situations were met in other branches of the law. His final step would be the correlation of these rules, so far as possible, into a system of principles governing his subject. Then when he put the results of this labor into his book, the first step — the isolated sets of facts as well as the names and citations of cases — should be for the most part relegated to the footnotes, just like the authorities of a historian or sociologist, leaving the text free for the ideas obtained in the last three steps. Wigmore on Evidence is an example. If a briefer textbook is planned, the cases could be weeded out, and only the more important or troublesome decisions retained for purposes of authority or explanation.

Mr. Black's work is hardly the textbook of our dreams. It is useful as opening up a new field not separately treated before, and it is well arranged in presenting, first, the grounds for rescission, second, the application of the rules to various classes of contracts; and third, the time and methods of effecting rescission.[3] A large number of cases are collected, which are good raw material for the practicing lawyer or for future investigations of the subject, but many well-known decisions are missing,[4] and there is very little attempt to do anything with the cases except state their facts. For example, one of the most interesting cases on rescission is *Goodrich* v. *Lathrop*.[5] The purchaser looked at one lot while the vendor meant to sell another; the contract described the vendor's lot; the purchaser asks for rescission. The case involves many difficult questions. Is there a contract if there is a concurrence in the expressions of the parties' wills, or must there also be a concurrence of wills, the so-called external and internal theories, much controverted in the Civil Law? Does the plaintiff's carelessness bar relief? Does the fall in value of the land between the contract and the suit constitute a change of position which will bar relief? If rescission is granted, should the vendor receive compensation? What is the effect of the California statute,[6] and is it desirable legislation? Mr. Black cites *Goodrich* v. *Lathrop* three times,[7] but hardly touches any of these problems, and in no part of his book does he discuss the nature of a contract. Indeed, Mr. Black almost never gets away from the bare facts of the cases in his narrow field. No use is apparently made of the analogies of quasi-contract and specific performance. Other text-writers are infrequently cited. No reference is given to the careful test of rescission for mistake in the new German Code,[8] and all discussion of that topic in the Roman Law is ignored, although Blackburn, J., went straight to the Digest to learn what is a material mistake.[9] Even the common law cases appear chiefly in an interminable succession of sets of facts, and the reasoning of the courts is rarely quoted or summarized.

[2] See WIGMORE, EVIDENCE, and CASES ON TORTS.

[3] The term "administrative law," applied by Mr. Black to this third division, is unfortunate, since those words are now used of a department of public law, wholly unconnected with rescission.

[4] *E. g.*, Hitchcock *v.* Giddings, 4 Pri. 135 (sale of a defeasible interest which had already lapsed); Scott *v.* Coulson, [1903] 2 Ch. D. 249 (sale of insurance policy on a man already dead); Lawrency *v.* Staigg, 8 R. I. 256 (question whether mistake in area of land sold should be ground for rescission or change in the price); Gun *v.* McCarthy, L. R. Ir. 13 Ch. D. 304 (unilateral mistake due to error in calculation, known by the other party); Sherwood *v.* Walker, 66 Mich. 568 (sale of cow supposed to be barren but discovered to be a breeder).

[5] 94 Cal. 56.

[6] CAL. CIV. CODE, §§ 3407, 3408.

[7] §§ 140, 633, 697.

[8] § 119.

[9] Kennedy *v.* Panama Mail Co., L. R. 2 Q. B. 580, 587.

Where there is a conflict of authority, we could wish a more thorough analysis of the opposing considerations.[10]

It is not a book to which one can go for help in grappling with the difficulties of rescission. Thus in the chapter on rescission for breach of contract,[11] there is nothing on the right of the party at fault to recover for work done before the rescission.[12] The questions, why is a mistake a ground for rescission and what is a material mistake, receive only unsystematic attention.[13] Mr. Black is to be thanked for repudiating the mistake of law delusion,[14] but we must go to Woodward [15] for arguments which will free judges from that obsession.

A minor fault, but one which is becoming so common in law books that it ought to be noticed, is the use of the legal slang "breaches a contract" [16] instead of the expressive "breaks."

In conclusion, we would suggest that reformation is so closely allied to rescission that the two subjects could profitably be treated together in a discussion of the principles which govern attack on an apparently valid legal transaction.

ZECHARIAH CHAFEE, JR.

MAGNA CHARTA AND OTHER ADDRESSES. By William D. Guthrie. New York: Columbia University Press. 1916. pp. vi, 282.

An address before the Constitutional Convention of the State of New York, a banquet speech before the Mayflower descendants, addresses before bar associations and a political convention, remarks at the dedication of a Roman Catholic parochial school — these are some of the papers here collected. The topics are as varied as the occasions; but the papers have in common the quality of proceeding from the point of view of an experienced and conservative lawyer. Perhaps the paper most pertinent to the present time is the one denouncing direct primaries (pp. 219–46); and certainly the paper most obviously of permanent utility is the one on the Eleventh Amendment (pp. 87–129).

EUGENE WAMBAUGH.

THE LAW OF PROMOTERS. By Manfred W. Ehrich. Albany: Matthew Bender and Company. 1916. pp. lxi, 645.

This treatise, well arranged and carefully indexed, attempts to present a comprehensive summary of the law relative to the formation of corporations. The field has been covered with thoroughness. Both the American and English cases on the subject have been consulted, and a large part of the text consists of lengthy quotations from them, and of summaries of their holdings. Occasionally the author expresses his own opinions, though not always either very fluently or very fortunately. For example, it may perhaps be doubted that specific performance of a contract to form a corporation will never be decreed (§ 38).

The book should be of some value to attorneys practicing in this field, because of its collection and arrangement of authorities. Especially should this be true of the chapters on secret and lawful profits (containing an exhaustive statement of the Old Dominion litigation). It is, however, difficult to say that the author's avowed purpose — to benefit the academic student of the law — has been fulfilled.

RAEBURN GREEN.

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[10] *E. g.*, § 128 on unilateral mistake.
[11] Chapter viii, Failure, Refusal, or Impossibility of Performance.
[12] Fully discussed by WOODWARD, QUASI-CONTRACTS, ch. x.
[13] § 134 *ff.* Compare the valuable analysis in POLLOCK, CONTRACTS, ch. ix.
[14] § 147.
[15] WOODWARD, QUASI-CONTRACTS, ch. iii.
[16] § 5.